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Supreme Court of the United States

OCTOBER TERM, 1948

NO.

MAGGIE F. ANDERSON, *Petitioner*

vs.

W. P. BOWERS, Individually and as Collector of Internal Revenue for the District of South Carolina.

PETITION FOR WRIT OF CERTIORARI

To The Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, Maggie F. Anderson, respectfully represents that she is aggrieved by the final judgment and decision of the United States Court of Appeals for the Fourth Circuit, in an action at law entitled No. 5806, Maggie F. Anderson, Appellant, vs. W. P. Bowers, Individually and as Collector of Internal Revenue for the District of South Carolina, Appellee, decided November 8, 1948, Petition for Rehearing being denied on January 17, 1949, and, by reason thereof, your Petitioner prays for the allowance of a Writ of Certiorari to be directed to the United States Court of Appeals for the Fourth Circuit, in order that the said judgment and decision may be reviewed by your Honorable Court. (R. 52)

I.

SUMMARY STATEMENT OF MATTER INVOLVED

This is an action at law, commenced in the District Court of the United States for the Eastern District of South Carolina, in which Petitioner, as Plaintiff, sought to recover the sum of Ten Thousand Seventy-Two and 74/100 ($10,072.74) Dollars, with interest from March 15, 1942, from Respondent, as Defendant, as representing an alleged erroneous and illegally collected income tax exacted of the Petitioner for the year ending December 31, 1941, under Sec. 41 of Volume 28, U.S.C.A. The case was tried upon a stipulation and additional testimony by the District Judge, who, on May 18, 1948, filed his opinion, Findings of Fact, Conclusions of Law and Order in which judgment was rendered for the Respondent, and on May 18, 1948, judgment was entered accordingly. (R. 6-15)

Upon appeal by Plaintiff, Maggie F. Anderson, to the Court of Appeals for the Fourth Circuit, that Court, for the reasons stated in its opinion, rendered November 8, 1948, affirmed the judgment of the District Court. The opinion of the Court of Appeals gives full effect and recognition to the action of the Probate Court for Chesterfield County, South Carolina, in approving the final accounting of the Petitioner, as Executrix under the Will of her late husband, J. L. Anderson, wherein the sum of Twenty-Five Thousand One Hundred Six and 99/100 ($25,106.99) Dollars was allowed her as commissions, as being the law of the case, such approval by the Probate Court not having been appealed from and, therefore, final, though it was conceded that the action of the Probate Court in so doing was erroneous. The opinion accords full recognition to the action of the Probate Court and treats its action as binding and conclusive on the assumption that the Probate Court had jurisdiction. (R. 20-25)

II.

BASIS OF JURISDICTION OF SUPREME COURT

Jurisdiction rests upon Section 240-A of the Judicial Code, as amended by Act of Congress of February 13, 1925, 43 Stat. 936, (28 USCA, Sec. 347a), conferring jurisdiction to review any judgment of the Court of Appeals, and Section 5-b of Rule 38 of the Supreme Court.

III.

QUESTIONS INVOLVED

Has the United States Court of Appeals decided an important question of local law in a way probably in conflict with applicable local decisions in that the Court did not follow the South Carolina laws as declared by the Courts of South Carolina within the requirement of Sec. 34 of the Judiciary Act of 1789, 28 USCA Sec. 725 and of the decision in *Erie R. Co. v. Tompkins,* 304 U. S. 64, and subsequent cases decided by the United States Supreme Court extending and broadening the principle laid down by the Erie case?

IV.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

In making her income tax return for the year ending December 31, 1941, Petitioner included the sum of Twenty-Fve Thousand One Hundred Six and 99/100 ($25,106.99) Dollars, which sum represented the amount allowed by the Probate Court for Chesterfield County, South Carolina, as commissions for services as Executrix of the Estate of her deceased husband, J. L. Anderson. In 1943, the Commissioner of Internal Revenue asserted an additional estate tax against the J. L. Anderson Estate, resulting in a disallowance as a deduction to the Estate of Eighteen Thousand Four Hundred Ninety-Eight and 49/100 ($18,-

498.49) Dollars, this amount being disallowed for the reason that the commissions allowed Petitioner exceeded by this amount the allowable commissions under South Carolina law. An additional estate tax in the amount of Six Thousand Four Hundred ($6,400.00) Dollars was assessed and paid and, as a result, the amount disallowed by the Commissioner has been twice taxed, once as income to the taxpayer, the Petitioner, the tax being Ten Thousand Seventy-Two and 74/100 ($10,072.74) Dollars, and once as a part of the Estate of J. L. Anderson, the tax being Six Thousand Four Hundred ($6,400.00) Dollars. (R. 3-4)

By his Will, J. L. Anderson left his entire estate to his widow, the Petitioner, with the exception of certain debts owed to him by his four children, which were forgiven, and she was appointed sole Executrix.

The opinion of the Court of Appeals is bottomed on the proposition that the amount reported by Petitioner in her 1941 income tax return as commissions, and which was allowed by the Probate Court as such, was actually commissions and income to her, taxable under Sec. 22 (a) of the Internal Revenue Code, (26 USC 46 Ed. Sec. 22). This conclusion was reached by the Court by giving full effect and recognition to the approval of the final account of Petitioner, as Executrix, by the Probate Court, as the law of the case according to South Carolina law and binding on it, though it was conceded that the action of such Court was erroneous. The opinion, in according full recognition to the actions of the Probate Court and treating its actions as binding and conclusive, assumes that the Probate Court had jurisdiction.

The Probate Court, in attempting to allow the sum of Twenty-Five Thousand One Hundred Six and 99/100 ($25,106.99) Dollars as commissions, exceeded its jurisdiction to the extent of Eighteen Thousand Four Hundred and Ninety-Eight and 49/100 ($18,498.49) Dollars. Its action in so doing, under South Carolina law, may be disregarded

as a nullity whenever and wherever encountered. The opinion of the Court of Appeals in giving full credence and recognition to the action of the Probate Court decided an important question of local law in conflict with applicable local decisions of the Supreme Court of South Carolina.

Petitioner, being the residuary legatee under the Will of her husband, J. L. Anderson, would have received the fund in question as a portion of her legacy should it be disallowed as commissions, and being a bequest is exempt from income tax under Sec. 22 (b) (3) of the Internal Revenue Code. The effect of the decision of the Court of Appeals in treating the fund in question as commissions is that such fund is twice taxed, which is contrary to Congressional intent.

Respectfully submitted,

MAGGIE F. ANDERSON.
By JOHN D. NOCK,
Her Attorney.

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SUPPORTING BRIEF

I.

Index to Brief is included in index to Petition, supra.

II.

THE OPINIONS OF THE DISTRICT COURT AND COURT OF APPEALS

The opinion of the District Court was filed May 18, 1948, and reported in 77 Fed. Sup. 980.

The opinion of the Court of Appeals was filed November 8, 1948, and reported in 170 Fed. 2d. 108.

III.

GROUNDS ON WHICH SUPREME COURT JURISDICTION IS INVOKED

This application is made upon authority of Section 240-A of the Judicial Code as amended by the Act of Congress of February 13, 1825, 43 Stat. 936 (28 USCA, Sec. 347a), and Section 5-b of Rule 38 of this Court.

IV.

STATEMENT OF CASE

This is an action to recover an erroneous and illegally collected income tax exacted of the Petitioner by the Respondent for the year ending December 31, 1941, under the provisions of Sec. 41 of Vol. 28 U.S.C.A. The amount claimed is Ten Thousand Seventy-Two and 74/100 ($10,072.74) Dollars, with interest from March 15, 1942, to date of payment.

J. L. Anderson, a resident of Cheraw, South Carolina, died testate on February 18, 1940. By his Will, he left his entire Estate to his widow, the Petitioner, with the exception of certain debts owed to him by his four children,

which were forgiven. The Petitioner was appointed as sole Executrix of the Estate, duly qualified as Executrix and administered the Estate. On February 28, 1941, she filed a final accounting, which was approved by the Probate Court for Chesterfield County, South Carolina. The Estate was then closed and she was discharged as Executrix.

Among the items in the Petitioner's final account as Executrix was a claim for commissions as Executrix in the amount of Twenty-Five Thousand One Hundred Six and 99/100 ($25,106.99) Dollars, which amount was allowed by the Probate Court.

On March 15, 1942, the Petitioner filed her Federal income tax return for 1941, in which she included the Twenty-Five Thousand One Hundred Six and 99/100 ($25,106.99) Dollars commissions as income and paid the tax due thereon.

In November of 1942, the Commissioner of Internal Revenue determined that the commission allowed your Petitioner as Executrix should be reduced to Six Thousand Six Hundred Eight and 50/100 ($6,608.50) Dollars, asserting that the difference of Eighteen Thousand Four Hundred Ninety-Eight and 46/100 ($18,498.46) Dollars was not allowable under South Carolina law. The Eighteen Thousand Four Hundred Ninety-Eight and 46/100 Dollars thus disallowed was, by the Commissioner, treated as a part of the estate and an additional estate tax of Six Thousand Four Hundred ($6,400.00) Dollars was levied on it and paid.

The item of Eighteen Thousand Four Hundred Ninety-Eight and 46/100 ($46,498.46) Dollars disallowed by the Commissioner as commissions has thus been twice taxed, once as income to the taxpayer, the tax being Ten Thousand Seventy-Two and 74/100 ($10,072.74) Dollars, and once as a part of the Estate of J. L. Anderson, the tax being Six Thousand Four Hundred ($6,400.00) Dollars. (R. 3-4)

Petitioner filed with the Commissioner of Internal Revenue a claim for refund of Ten Thousand Seventy-Two and 74/100 ($10,072.74) Dollars of the tax paid for 1941, on the ground that she had erroneously included in her return the disallowed Executrix's commissions of Eighteen Thousand Four Hundred Ninety-Eight and 46/100 ($18,498.46) Dollars. This claim was disallowed and this suit was instituted to recover the amount of Ten Thousand Seventy-Two and 74/100 ($10,072.74) Dollars, with interest from March 15, 1942.

V.

SPECIFICATION OF ERROR

In affirming the judgment of the District Court, it is respectfully urged:

1. The Court of Appeals erred in that it gave full credence and recognition to an act of the Probate Court of Chesterfield County, South Carolina, which exceeded the statutory jurisdiction of such Court, whereas applicable decisions of the Supreme Court of South Carolina hold that such acts are a mere nullity and may be disregarded whenever and wherever encountered, thus rendering a decision in conflict with applicable law of the State of South Carolina.

VI.

ARGUMENT

The Courts of Probate in South Carolina are Courts of limited jurisdiction and have only such jurisdiction as the General Assembly may confer.

Art. V, Sec. 19 of the South Carolina State Constitution of 1895, provides, in part, as follows:

> "SECTION 19. COURT OF PROBATE.— . . . the jurisdiction of all matters testamentary and of administration, in business appertaining to minors, and

> the allotment of dower, in cases of idiocy and lunacy, and persons non compos mentis, *shall be vested as the General Assembly may provide,* . . . (emphasis added).

As stated by the Supreme Court of South Carolina in *Beatty v. National Surety Company,* 132 S. C. 45; 128 S. E. 40:

> "Under the Constitution of 1895 . . . *no judicial power is expressly vested in the Court of Probate. It has only such jurisdiction as the General Assembly may confer. Bradford v. Richardson,* 111 S. C. 205, 212; 97 S. E. 58; and *Davenport v. Caldwell,* 10 S. C. 317." (emphasis added.)

To the same effect is the decision in *Beckwith v. McAllister,* 165 S. C. 1; 162 S. E. 623, wherein the Court reaffirmed the doctrine that the Probate Court's jurisdiction is purely statutory.

The General Assembly of South Carolina, in its wisdom, has seen fit to limit the Probate Court's jurisdiction in fixing Executors' or Administrators' commissions for services in their capacity as such.

Section 9017, Code of Laws of South Carolina, 1942, provides:

> "Every Executor or Administrator shall, for his, her or their care, trouble and attendance, in the execution of their several duties, take, receive or retain in his, her or their hands, *a sum not exceeding the sum of two dollars and fifty cents for every hundred dollars which he, she, or they shall receive, and the sum of two dollars and fifty cents for every hundred dollars which he, she or they shall pay away in credits, debts, legacies or otherwise . . . nor shall any Executors or Administrators . . . be entitled to any commissions for paying or retaining to themselves any such debts or legacies.*" (emphasis added.)

It has been repeatedly held by the Supreme Court of South Carolina, in cases construing Sec. 9017, that Execu-

tors and Administrators must actually receive and handle money in order to justify an allowance of the statutory commissions. *Spartanburg County v. Arthur*, 180 S. C. 81; 185 S. E. 486; *McNulty v. DeSaussure*, 41 S. C. 457; 19 S. E. 926, 946; *Ruff v. Summers, Exors.*, 4 DeSau. Eq. 529; *Logan v. Logan*, 1 McCord Eq. 1.

Recognizing that under certain conditions and for extraordinary trouble Executors and Administrators, possibly, would not be sufficiently compensated in such cases to the limited amount fixed in Sec. 9017, the General Assembly saw fit to fix a method for such Executors or Administrators to obtain additional compensation but specifically took from the Probate Court the power and jurisdiction to fix extra compensation and placed such jurisdiction exclusively in the Common Pleas Court. This became Sec. 9018 of the Code of Laws of South Carolina, the pertinent portions of which are as follows:

> "9018. EXECUTORS NOT SATISFIED MAY BRING ACTION FOR ADDITIONAL COMPENSATION.—Any Executors or Administrators, who shall have had extraordinary trouble in the management of the Estates under his care, and shall not be satisfied with the sums hereinbefore mentioned, *may be at liberty to bring an action in the Court of Common Pleas for services;* and the verdict of the jury and judgment of the Court thereupon shall be final and conclusive in such cases: provided, always, that no verdict shall be given for more than five per centum over and above the sums allowed by this chapter." (emphasis added.)

In recognition of the principle that the Probate Court is limited in its jurisdiction in limiting Executors' commissions to an amount not exceeding two dollars and fifty cents for every hundred dollars received and two dollars and fifty cents for every hundred dollars paid out computed on monies handled, the General Assembly, in 1943,

in order to allow Executors and Administrators larger commissions in Estates where the cash handled was relatively small, amended Sec. 9017 by allowing commissions to Executors and Administrators on the "appraised value of all personal assets." (Act No. 32, Acts of the General Assembly, 1943, page 35.) This amendment was not effective in 1941, but is referred to for the purpose of showing a recognition by the General Assembly that the jurisdiction of the Probate Court was limited in fixing Executors' commissions under Sec. 9017.

An examination of Sections 9017 and 9018 shows a clear intention on behalf of the General Assembly to limit the jurisdiction of the Probate Court in allowing Executors' commissions to an amount not exceeding two and one-half per cent on monies received and two and one-half per cent on monies paid out; if an Executor or Administrator desires additional compensation for extraordinary service, jurisdiction is vested exclusively in the Court of Common Pleas and even this Court is limited in its jurisdicton to five per centum over and above the sum allowed by the Probate Court. Neither can Executors nor Administrators be entitled to any commissions for paying or retaining to themselves on any debts or legacies.

It is not questioned that no action was ever instituted by Petitioner in the Court of Common Pleas to obtain extra compensation and that her sole claim and authority for the sums paid to her as commissions, Twenty-Five Thousand One Hundred Six and 99/100 ($25,106.99) Dollars, was the Order of the Probate Court for Chesterfield County approving her final accounting in which such sum was set out as commissions due her.

A cursory examination of the records before the Probate Court, i.e. the first and final return and account of Petitioner in her capacity as Executrix filed with the Probate Court for Chesterfield County on February 28, 1941, approved by the Probate Court in which commissions were

set out as Twenty-Five Thousand One Hundred Six and 99/100 ($25,106.99) Dollars, shows conclusively that such commissions were based upon the total gross amount of the Estate received and disbursed and were not calculated upon the cash sums received and disbursed pursuant to and in accordance with Sec. 9017.

The Commissioner of Internal Revenue, from an examination of such records, had no difficulty in immediately ascertaining that under the South Carolina law the allowable commissions amounted to Six Thousand Six Hundred Eight and 50/100 ($6,608.50) Dollars and, therefore, disallowed the amount in excess of such sums, to-wit: Eighteen Thousand Four Hundred Ninety-Eight and 49/100 ($18,498.49) Dollars, and assessed Federal Estate taxes on such sum, which were paid. It is easily ascertainable from such records that all amounts allowed as commissions in excess of Six Thousand Six Hundred Eight and 50/100 ($6,608.50) Dollars were contrary to the provisions of Sec. 9017 and without the jurisdiction of the Probate Court to so allow.

It is well-settled in South Carolina that a judgment may be disregarded as a nullity wherever encountered in any proceeding whether direct or collateral where jurisdictional defects appear on the record. As stated by the Supreme Court in the case of *Hood v. Cannon,* 178 S. C. 94; 182 S. E. 306, 309:

> "In the case of *Woods v. Bryan,* 41 S. C. 74; 19 S. E. 218, 220, 44 Am. St. Rep. 688, the Court with reference to collateral attacks on judgments quotes with approbation from the case of *Turner v. Malone,* 24 S. C. 398, 401, the following language: 'If the infirmity appears in the record itself, that is, no doubt, conclusive; *and the judgment may be disregarded as a nullity whenever and wherever it is encountered, in any proceedings, direct of collateral,* as in the cases of *Hill v. Robertson,* 1 Strob. 1; *Bull v. Rowe,* 13 S. C. 355, and *Clark v. Melton,* 19 S. C. 498.' " (emphasis added.)

To the same effect are the decisions in the cases of *Stone v. Mincey,* 180 S. C. 317; 185 S. E. 619; *Davenport v. Caldwell,* 10 S. C. 317; *Lyles v. Bolles,* 8 S. C. 258.

In the case of *Beckwith v. McAllister,* 165 S. C. 1; 162 S. E. 623, 628, supra, the opinion of the Court is particularly pertinent, and, in part, is as follows:

> "In making its Order of January 5, 1924, the Probate Court exceeded its jurisdiction. *By 'excess of jurisdiction' as distinguished from the entire absence of jurisdiction (as applied to cases like the instant one), we understand and mean that the act, though within the general power of the Judge, is not authorized, and therefore void with respect to the particular case,* because the conditions which alone authorize the exercise of his general power in that particular case are wanting; and hence the judicial power is not in fact lawfully invoked." (emphasis added.)

The opinion of the Court of Appeals recognizes that it is conceded by the parties to the pending case that the method pursued by the Commissioner of Internal Revenue in determining the amount of the allowable commissions, i.e. Six Thousand Six Hundred Eight and 50/100 ($6,608.50) Dollars, was correct. It is contended by Petitioner that the authorities above referred to conclusively show that this method was correct and that the action of the Probate Court in attempting to allow a sum in excess of the allowable amount was not only erroneous and illegal but, in attempting to do so, it exceeded its jurisdiction. Having exceeded its statutory jurisdiction, its acts in attempting to do so, under the decisions of the Supreme Court of South Carolina, are null and void and may be disregarded wherever met.

The record discloses and the opinion of the Court of Appeals so states that Petitioner is the residuary legatee under the Will of her late husband, J. L. Anderson. As

such, she took practically his entire Estate, and the amount allowed her as commissions in excess of the allowable amount under South Carolina law and without the jurisdiction of the Probate Court so to do, Eighteen Thousand Four Hundred Ninety-Nine and 49/100 ($18,499.49) Dollars, if not commissions, came to her under the Will of her said husband as a part of her legacy and is not taxable as income to her under Sec. 22 (b) (3) of the Internal Revenue Code, which specifically exempts from income tax "the value of property acquired by gift, bequest, devise or inheritance." (26 U. S. C. 1946 Ed. Sec. 22 (b) (3).

The mere designation of the sum in excess of Six Thousand Six Hundred Eight and 50/100 ($6,608.50) Dollars attempted to be allowed by the Probate Court to her as commissions does not make it commissions. An adherence to the illegal designation of such fund as commissions by the Probate Court would sacrifice, in its entirety, substance for form, which was not done by the Commissioner of Internal Revenue. He went behind the form and the designation as commissions and treated the excess amount otherwise. The taxing authorities have adhered to the principle that substance and intent rather than form control. This rule is aptly stated in the opinion in *Bilicke v. Commissioner of Internal Revenue,* 20 B. T. A. 784, 791, which in part is as follows:

> "We have held in various proceedings that tax liability must be determined by what actually occurred, and not by what might have occurred or ought to have taken place. . . . Therefore, in accordance with the necessary implications of the principle, *we must look beyond forms and procedure, beyond the court orders and the permits set out in the statement of facts, to the substance of the transactions giving rise to the controversy presented by these proceedings.*" (emphasis added.)

The Probate Court having exceeded its jurisdiction in attempting to allow any sum in excess of Six Thousand Six Hundred Eight and 50/100 ($6,608.50) Dollars as commissions and the same being a nullity, it was not necessary that Petitioner appeal and have the Court's Order reversed. She had a legal right to the entire amount and, therefore, retained the excess, not as commissions, but as part of the legacy under her husband's Will.

The ultimate effort of obtaining a reversal of the Probate Court's actions would be that she would still receive the excess over Six Thousand Six Hundred Eight and 50/100 ($6,608.50) Dollars properly designated as a bequest and not as commissions. She, apparently, fully realized this and, inasmuch as she received the funds, the costly method of appeal and reversal was not warranted as the result would, to all effects and purposes, be the same.

The opinion of the Court of Appeals relies extensively on the decision in the case of *North American Oil Co. v. Burnett,* 286 U. S. 117; 76 L. Ed. 1197. The opinion in such case is predicated on the assumption that the taxpayer therein received "earnings" under a claim of right and without restriction to its designations. As stated therein, page 422, "It is conceded that the net profits earned by the property during the receivership constituted income." If "income," it was taxable as such. However, Petitioner having received the funds referred to herein as a "bequest," it did not represent "earnings" and was not "income" and, therefore, not taxable. (R. 23-24)

Bequests are exempt from taxation under Sec. 22 (b) (3) of the Internal Revenue Code. Congress has never expressed an intent to twice tax the value of property which legatees receive from the decedent's estate, as apparently was done in the instant case. As stated by this

Court in *Lyeth v. Hoey*, 305 U. S. 188 (194); 83 L. Ed. 119:

> ". . . Further, by the 'estate tax,' Congress has imposed a tax upon the transfer of the entire net estate of every person dying after September 8, 1916, allowing such exemptions as it sees fit in arriving at the net estate. *Congress has not indicated any intention to tax again the value of the property which legatees, devisees or heirs receive from the decedent's estate.*" (emphasis added.)

The effect of the decision of the Court of Appeals for the Fourth Circuit is to lend its legal sanction and permit one of the officers of the Federal Government, the Commissioner of Internal Revenue, to assess and collect Estate taxes on the identical funds on which another officer, the Collector of Internal Revenue, collected income tax on an inconsistent and diametrically opposed construction, contrary to the laws of the State of South Carolina and contrary to Congressional intent.

Respectfully submitted,

JOHN D. NOCK,
Cheraw, S. C.
J. DAVIS KERR,
Spartanburg, S. C.
HARVEY W. JOHNSON,
Spartanburg, S. C.
Counsel for petitioner.

APPENDIX

Art. V, Sec. 19, South Carolina State Constitution of 1895:

"SECTION 19. COURT OF PROBATE.— The Court of Probate shall remain as now established in the County of Charleston. In all other Counties of the State, the jurisdiction of all matters testamentary and of administration, in business appertaining to minors, and the allotment of dower, in cases of idiocy and lunacy, and persons non compos mentis, shall be vested as the General Assembly may provide, and, until such provision, such jurisdiction shall remain in the Court of Probate as now established."

Sec. 9017, Code of Laws of South Carolina, 1942:

"9017. COMMISSIONS.—Every executor or administrator shall, for his, her or their care, trouble, and attendance, in the execution of their several duties, take, receive, or retain in his, her, or their hands, a sum not exceeding the sum of two dollars and fifty cents for every hundred dollars which he, she, or they shall receive, and the sum of two dollars and fifty cents for every hundred dollars which he, she, or they shall pay away, in credits, debts, legacies, or otherwise, during the course and continuance of their or either of their managements or administrations, and so in proportion for any sum or sums less than one hundred dollars: PROVIDED, that no executor or administrator shall, for his, her, or their trouble in letting out any moneys upon interest, and again receiving the same, be entitled to take or retain any sum exceeding ten dollars for every hundred dollars for all sums arising by moneys let out to interest, and in like proportion for a larger or lesser sum; nor shall any executors or administrators who may be creditors of any testator or intestate, or to whom any sum of money or other estate may be bequested, be entitled

to any commissions for paying or retaining to themselves any such debts or legacies."

Sec. 9018, Code of Laws of South Carolina, 1942:

"9018. EXECUTORS NOT SATISFIED MAY BRING ACTION FOR ADDITIONAL COMPENSATION.—Any Executors or Administrators, who shall have had extraordinary trouble in the management of the Estates under his care, and shall not be satisfied with the sums hereinbefore mentioned, may be at liberty to bring an action in the Court of Common Pleas for services and the verdict of the jury and judgment of the Court thereupon shall be final and conclusive in such cases; provided, always, that no verdict shall be given for more than five per centum over and above the sums allowed by this chapter."

Act No. 32, Acts of the General Assembly of 1943:

"NO. 32

AN ACT TO AMEND SECTION 9017, CODE OF LAWS OF SOUTH CAROLINA, 1942, RELATING TO COMMISSION OF EXECUTORS AND ADMINISTRATORS, BY PROVIDING FOR THE CALCULATION OF SAID COMMISSIONS UPON THE APPRAISED VALUE OF THE PERSONAL ASSETS.

BE IT ENACTED by the General Assembly of the State of South Carolina:

SECTION 1: 9017, 1942 CODE, AMENDED—CALCULATE COMMISSIONS OF EXECUTORS AND ADMINISTRATORS ON APPRAISED VALUE OF PERSONALITY.—That Section 9017 of the Code of Laws of South Carolina, 1942, be, and the same is hereby amended, by inserting on line four of said section after the word 'dollars' and on line six of said section after the word 'dollars' the word 'appraised value

of all personal assets'; so that said section, when so amended, shall read as follows:

'Section 9017. Every executor or administrator shall, for his, her or their care, trouble, and attendance, in the execution of their several duties, take, receive, or retain in his, her, or their hands, a sum not exceeding the sum of two dollars and fifty cents for every hundred dollars appraised value of all personal assets which he, she or they shall receive, and the sum of two dollars and fifty cents for every hundred dollars appraised value of all personal assets which he, she or they shall pay away, in credits, debts, legacies, or otherwise, during the course and continuance of their or either of their managements or administrations, and so in proportion for any sum or sums less than one hundred dollars: PROVIDED, that no executor or administrator shall, for his, her or their trouble in letting out any moneys upon interest, and again receiving the same, be entitled to take or retain any sum exceeding ten dollars for every hundred dollars for all sums arising by moneys let out to interest, and in like proportion for a larger or lesser sum; nor shall any executors or administrators who may be creditors of any testator or intestate, or to whom any sum of money or other estate may be bequeathed, be entitled to any commissions for paying or retaining to themselves any such debts or legacies.'

SECTION 2: REPEAL.—All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

SECTION 3: TIME EFFECTIVE.—This Act shall take effect upon its approval by the Governor.

Approved the 12th day of March, 1943."

Sec. 22, Internal Revenue Code, paragraph (b) (3)—Title 26 U. S. C. A. 22 (b) (3):

"(b) EXCLUSIONS FROM GROSS INCOME. The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(3) GIFTS, BEQUESTS, DEVISES, AND INHERITANCES. The value of property acquired by gift, bequest, devise, or inheritance. There shall not be excluded from gross income under this paragraph, the income from such property, or, in case the gift, bequest, devise, or inheritance is of income from property, the amount of such income. For the purposes of this paragraph, if, under the terms of the gift, bequest, devise, or inheritance, payment, crediting, or distribution thereof is to be made at intervals, to the extent that it is paid or credited or to be distributed out of income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property;"